



CHARTER REVISION COMMISSION
JUNE 17, 2014
7 P.M.

Charter Revision

The Charter Revision Commission Meeting was held in Conference Room A of the Board of Education Administration Building on Tuesday, June 17, 2014 at 7 p.m.

Present

David Larson, Chair, Robert Blanchard, Anton Petras, Michael Gaudino, Thomas Hutton, Joseph Milardo, Domenique Thornton, Daniel Ryan and staff General Counsel Brig Smith and Clerk Marie Norwood.

Absent

Vincent Loffredo, Philip Pessina, and Kathryn Adams

Comm. Thornton apologizes for missing the last meeting; she had an annual meeting of a nonprofit group she represents. She read through the minutes would the Chair consider looking again at 4 year terms for Council and Mayor. Comm. Milardo states the committee will revisit everything when the draft report comes in. This is all preliminary and up for grabs at the end.

Chair Larson calls the meeting to order at 7:05 p.m.

Minutes Approved

The Chair asks for a motion to approve the minutes of June 10th; Comm. Ryan so moves and is seconded by Comm. Gaudino. There is no discussion. The vote is called and Commissioners Petras and Thornton abstain from the vote. The chair declares the minutes approved by a unanimous vote with the noted abstentions.

Public Comment

No member of the public is present.

The Chair invites Attorney Smith to speak to the issues sent to him. He states he is working on the definite product. First is the term limit question. Second, staggered terms for council; third, setting up a separate taxing district for the School District. Fourth had to do with the mayor's payment into the pension fund. That, he has referred to outside counsel.

Atty. Smith states term limit is tricky. He heard from CCM; so far as he can tell, Stratford is the only town that has done term limits. They did it by referendum and did it by ordinance for the Council only. They had 3 terms for the Council, and for the Board of Education and Planning, it was one and done. Bristol had considered it recently and it went the other way. Waterbury, the Corporation Counsel is considering the same thing. They haven't done it because it is unclear whether we can do it. He has an OLR (Office of Legislative Research) article from February, 2001 specifically on if towns impose term limits and OLR has looked at it and the State Law is silent; it neither imposes a ban nor expressly authorizes it. He spoke to the Secretary of State's Office, and they are not aware of any provision for the Charter prohibiting limit of terms; however, there is a question of home rule. Despite home rule, the CT Supreme Court by specific enumeration has implied that towns cannot do something not expressly given to them. They struck down recall. The Supreme Court said you don't get to go so far in elections. He reads

further another example of the Supreme Court upholding a home rule issue. The answer is, it depends. But the general proposition in CT is different. Michigan is a home rule state but CT is a strong Dillon's Rule state that you are creatures of the State. In CT, there is a robust line of cases and if you can't find a specific grant of power then you can't do it. The closest Supreme Court decision on elections says you can't do it. Chair Larson if we did it, it can be challenged and it could go to the Supreme Court. Comm. Milardo states we are deliberating for the Council to present to the public and Brig's analysis that Stratford did it by election and what better way to do it through than through the election process of the referendum. Home rule does allow it, so long as you don't go afoul of the law and that is how I look at it. He researched the issue of home rule thoroughly when he represented a woman being prosecuted for geese in the backyard who was charged for keeping wild fowl. The issue was whether feeding them was keeping them. Ultimately it was lost because it was keeping a public nuisance. His research he finds we do not necessarily take the position of why open a can of worms. The issue we are putting forward is a populace one. The trend is let's get more people involved instead of the same group of people doing it day after day and year after year. Comm. Petras states South Fire District changed their rules and created term limits and it was not challenged. Comm. Ryan states I view we have term limits now because they can choose not to return them.

Chair Larson states we will address it with a motion. Comm. Milardo states we are a suggesting body. Atty. Smith states he will reduce it to writing. I am telling you where I am leaning. Comm. Gaudino states there is nothing in the State Constitution that directly tells us we can't and on the other side, it may not be authorized. He asks if everything we do is authorized by State Statute. Chair Larson responds municipalities are creatures of the State. The Board of Ed answers to the State Board and not the Mayor. Comm. Gaudino states if it isn't allowed by Constitution or statute we can't do it. Atty. Smith replies Ct. General Statute 7-148 is a list of what we can do in Home Rule and usually powers fit in there. He found the Caulfield line of cases and came across the limited language. Comm. Gaudino case law on this, there is nothing specific to term limits. Atty. Smith responds there is nothing on term limits. Comm. Milardo states if someone is elected, you can't vary their term. Atty. Smith States it would be a case of first impression. Stratford did it by referendum and ordinance.

Staggered term is same as term limits but it is less meaty. Chair Larson states the Board of Education has them. Atty. Smith states staggered terms are probably okay. Comm. Blanchard do we expect the Council to pass it on if the mayor's term is four years and council, two years. The Chair states this can be discussed when they receive the information from General Counsel.

Atty. Smith moves to the next item, separate taxing district. He states the preliminary opinion is you can't do it. He put feelers out. The definition for taxing district excludes school districts. The statute says everything except school district in a town. His colleagues said look at 10-240 where each town has Board of Education, it shall be a school district and have the powers and duties of a school district. He states you already have a school district and the Statute doesn't allow you to set up a taxing district. If you can reach out and pair with another town, you can do it. Comm. Milardo states the Statute does authorize us. Comm. Milardo states East Hampton is on third referendum for the Board of Education budget. If this would work you would have to be able to have a separate town vote and the Council has the budget process. Chair Larson suggests if you want to call Tom Mooney, they are the premier school board attorneys. They may give you definite law. Comm. Thornton East Hampton is a different form of government.

Atty. Smith moves to the last item, mayor's payment into pension; he has people working on this and will help advise us. Comm. Gaudino states we would talk about 401K. Atty. Smith states for tax purposes the Mayor would be considered an employee. Chair Larson states with a 403 plan, the City would put in and the Mayor would put in. You can go up to \$20,000 if you are under the age 50 and if over, you can put in more. It continues to grow so when you leave you take it and it is more than the money you put in. As of now, the mayor puts into the pension and takes out pretty much what you put in.

Public Comment Closes.

Chair Larson asks the committee to look at the updated list. The first is a proposal to change language taking out the town clerk reviewing petition language for a referendum and just having it reviewed by the City Attorney. Dr. Larson asks for a motion. Comm. Milardo moves it for approval and Comm. Petras seconds the motion. The Chair asks if there is any discussion; seeing none, he calls for the vote. It is unanimous to approve with seven aye votes. This change is approved.

Comm. Milardo states the School budget, it probably won't be able to be done, so we can't do it. Comm. Petras moves to drop this; his motion is seconded by Comm. Milardo. There is no discussion. The vote is called and it is unanimous to drop this from discussion.

Dr. Larson moves to the next item, where the Charter states the mayor's base salary. CCM (CT Conference of Municipalities) sent salaries. He reads the towns that they sent and the salary information. Comm. Milardo states he understands that in the budget it is \$85,000. The Clerk responds it was changed so that the salary would change after the election in November, 2013. Comm. Thornton asks who among them also has a town manager as well as selectman; which one is an elected Mayor and which have a mayor elected from among the council. Comm. Gaudino states can we remove Fairfield and Greenwich. Chair Larson states we should also will remove Norwich. Comm. Gaudino asks which are structured the same way as Middletown. Chair Larson states they should look at Bristol, East Hartford, Hamden, Milford, Stratford, Wallingford, and West Haven. The information was given to them by CCM. Comm. Milardo states they should look at those who have a popularly elected Mayor without a manager.

Chair Larson states salary will be addressed at the next meeting. Comm. Milardo states we should address the salary so something can be looked at as a benchmark. Chair Larson is leaning toward what Joe put on the table. It takes it out of the political realm and takes it out of the pension and giving him an annuity. Comm. Milardo states suppose the Council is mad at the Mayor and reduces the salary. The Council has frozen salaries. Comm. Thornton agrees it should be set and take it out of the political arena and we should look at what the directors are being paid in the City. The Clerk hands out the information. Chair Larson states looking at these salaries we will not peg to the top director but the \$100,000 range is in the ball park. Comm. Ryan states Joe brought this up earlier the Council can set the salary and it is set to politics. Pegging it to the directors' salaries might make the more objective choice. Comm. Milardo states certain officers and directors have to be paid more because of the problems that generate for the City and the knowledge they have to have and the Mayor has to counsel all these people. They (directors) have to have solid counseling. He hopes it is being done correctly. I think that is part of the mix. Comm. Gaudino states a lot of the jobs require things like engineering degrees and the Mayor doesn't need a degree. Comm. Thornton states some do and some don't. Comm. Gaudino states anyone can run for Mayor. Chair Larson states we will hold off discussion of salary until the information is received.

Chair Larson moves to the next item, fire commission that includes electors in the district as representatives. Is there a motion to have the Fire District have its own commission. Comm. Hutton the fire commissioners don't live in the district. Comm. Thornton they are council people and they don't live in the district. Chair Larson for the central district there are no people on the tax. Comm. Milardo you have Wesleyan, do we want to deal with that to give a proportionate part of the PILOT. The Chair asks if they can hold that. Just deal with the Fire District Commission. Comm. Thornton states the councilors are chosen at large so every single Council person represents every part of the city. We don't have special districts for the election of the Councilors. Comm. Hutton states it is taxation without representation. I pay my taxes and the Fire Commission are members outside the district and spend my money on what they feel what they want. Comm. Larson asks are only Council people commissioners of the district. Comm. Thornton responds yes; they vote for the Middletown district and then their own district. She asks why not make it one district and then everyone is a resident of the district. Comm. Milardo states the way the charter is set up, the people in the district have to vote for the merger. Comm. Ryan states isn't this causing more problems because someone has to elect commissioners in the city. Comm. Petras responds yes. Comm. Milardo states you could put it in the general election. Comm. Ryan asks is it causing more problems. Comm. Milardo it has worked fine and what he reads, it is the

Pilot funds. He has never heard this problem and can see how the problem presents itself. Comm. Gaudino states the council members are voting for the Middletown Fire District and then vote for South fire because they are part of that district. Comm. Ryan states they represent the city. Comm. Thornton states so long as they are impacted as anyone in the district there is no conflict.

Chair Larson suggests a motion be made that reads The Council shall appoint only residents to the Middletown Fire District. The Council votes for the City fire budget. Typically it is unanimous. Some are members and residents and some are not.

The Commission, along with the Chair decides to wait on this issue to hear from Comm. Loffredo. This is his issue and he can explain what the problem is.

The Chair moves to the changes in Restriction elected officials. This is divorcing the Mayor and Council. If the Mayor's term is expanding and the elected official serving as mayor and you have to have the exception and you have to have that for succession of the Mayor, someone has to take over for the Mayor. Chair Larson states there is a newer provision that no elected official can be appointed to a city job except for mayor's administrative assistant and corporation counsel. He states the change is no one elected official shall be appointed to salary position during their term of office. He asks if they can they step down if they were an attorney. Comm. Milardo states they had a situation where someone on the Board of Education stepped down and was put into the position of administrative assistant. Many people were upset about that and when it occurred, a lot of people felt badly and they don't want it to happen at all. The only one would be deputy mayor to mayor.

Comm. Milardo moves the motion for restricting all elected officials from any City position. Comm. Petras seconds the motion. Comm. Ryan says does it include the exception for Corporation Counsel and mayor's administration assistant. Comm. Thornton states those positions are unlike city employees and are political appointments. Chair Larson states the concern is an elected official going to one of these two positions. Comm. Thornton doesn't know what is wrong with that because it is a political appointment. They can be thrown out at the Mayor's pleasure. They are not Classified. Chair Larson states the motion is of any elected official going to any paid position.

The vote is called and it is two aye votes by Commissioners Petras and Milardo and four nay votes by Commissioners Blanchard, Hutton, Ryan and Thornton. The Chair declares the motion does not carry.

Comm. Milardo goes back to the mayor's salary and pension. Chair Larson asks can Council people use their time toward pension. The response is the only position that can do so is the Mayor's position and the Administrative Assistant. Comm. Milardo states getting the stipend we are talking about would solve the issue. Chair Larson states no mayor can appoint themselves to a (City) position. Comm. Milardo states because of the tax issue, they treat the Mayor like an employee and the mayor automatically goes into the pension so we will take them out of the pension and give them a portable investment fund and eliminate the position of mayor using the time for retirement if hired later into City position. Chair Larson states they will address mayor's salary, increase to COLA, and offer an investment fund at the next meeting.

Comm. Gaudino states the Clerk suggests we change the name of Administrative Assistant to Chief of Staff. Comm. Ryan states the title makes it sound clerical. Comm. Hutton comments when he took the job it is to call the shots in the office. Secretaries come to me because if I didn't know what was going on how good I serve the Mayor and from now on, the Mayor named him Chief of Staff and they had to come to him. Comm. Milardo states the mayor gives him duties. The Chair states we will leave in Corporation Counsel and staff. Comm. Thornton states the salary for Corporation Counsel is set in the budget and approved by the Council. Comm. Milardo responds it depends on the function and this was tied to the Mayoral changes proposed earlier.

Chair Larson asks for the motion and it would be a change in the title of Administrative Assistant to Chief of Staff. Comm. Thornton moves it for approval and Comm. Ryan seconds the motion. There is no further discussion. The vote is unanimous to approve by the members present and voting.

Eminent Domain. Chair Larson moves to the addition of language eminent domain only if for public use and other than that they can propose a referendum. Comm. Milardo states only if the property owner files an objection, then the Council will have to have a referendum. The point is not to have an individual be railroaded and lose the property on the basis of private development.

Chair Larson asks on the riverfront, if they wanted to take property for public and private use how does it fit in. Comm. Milardo responds there are very few property owners that would walk away from a nice chunk of change. If the property owner wants to keep the property, why shouldn't you have it and if the City says it is a private development, the question is do you use eminent domain for public use or adopt the Kelo v New London decision and you can invoke eminent domain if it is for the betterment of the town. If public interest is on the side of the City, you can't object, but if it's on the border that someone will cash in on 20 years later, maybe the voters should have a say and ask them if you want your town to do this. It puts a check on the Council.

Comm. Thornton asks if the language is consistent with Kelo. Comm. Milardo doesn't think it is unconstitutional. It doesn't stop the development; it supplants the Council vote to public referendum. Comm. Ryan states since this has legal implications, General Counsel should look at this. Comm. Milardo states it has to pass Constitutional muster. If it can pass muster of CT Law, the Commission can vote on this. Chair Larson states it needs review and should come back.

Comm. Gaudino has a question regarding when the Charter goes to the voters; is it they vote for each change. Comm. Thornton responds they will vote on the package. Comm. Gaudino states he requested information on how many times the Council has gone to referendum for bond ordinances between \$750,000 and \$1,000,000. The Clerk will get that information.

Chair Larson states maybe we can wrap up outstanding questions next week; if come back on July 8 and have everything put together, we can make amendments. If we could finalize our proposal on the 8th and have public hearing on the 15th and vote after or if you want another meeting. Comm. Gaudino replies it depends on what participation we have. If a lot, they could vote on the 22nd, but plan on vote on 15th. The Clerk comments that she will have to post a meeting notice for the vote. Comm. Ryan agrees the posting of the public hearing and vote after. Chair Larson comments they could table the vote if necessary.

Meeting Adjourned.

Chair Larson on a motion, second and unanimous vote declares the meeting adjourned at 8:33 p.m.

ATTEST:

Marie Norwood
Staff